

FILED

MAR 27 2014

VP

United States Bankruptcy Court
San Jose, California

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6 PRO SE

7 **UNITED STATES BANKRUPTCY COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA – DIVISION 5**

9 In Re: 10 JAMES MADISON KELLEY, 11 Debtor	Chapter 11 Adversary Case No. 10-05245
12 13 JAMES MADISON KELLEY 14 Plaintiff 15 v. 16 JPMORGAN CHASE BANK, NA, 17 DOES (1-20)))) MOTION FOR LEAVE TO AMEND) THE) SECOND AMENDED COMPLAINT))) PROPOSED AMENDED COMPLAINT))) (Proof of Service Included)))) Honorable Arthur S. Weissbrodt)) Hearing: May 9, 2014) Time: 3PM) Courtroom: 3020)
18 19 20 21 22 23 24 25	

1 SUMMARY

2 The Plaintiff respectfully requests that the Court grant leave to amend the Second
3 Amended Complaint ("SAC") to bring the complaint pleadings in line with the discovery
4 evidence. In addition, a new claim for discharge of the First loan debt by insurance
5 payments made beginning in 2008 and continuing in 2009, 2010, 2011, 2012 and 2013 is
6 made under the Cal. Commercial Code.

7
8 This is motion is made pursuant to FRBP 7015 with incorporates Rule 15 of FRCP.
9 The Proposed Third Amended Complaint ("SAC") is attached as an exhibit to this
10 motion.

11 DISCUSSION

12 The Third Amended Complaint does not alter the contract invalidity and TILA
13 claims that have already passed on motion to dismiss. But where possible the allegations
14 have been updated to include the discovery evidence obtained after the SAC.

15 Because the proposed changes in Third Amended Complaint are based on the
16 discovery evidence already obtained, it is unlikely to affect the length of these
17 proceedings.

1 **Conclusion:** For the foregoing reasons, the Plaintiff requests leave to submit the Third
2 Amended Complaint.

6 Dated: March 27, 2012

PRO SE

9 
James M. Kelley

14390 Douglass Lane
Saratoga, California 95070
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14 Attachment:
15 (Proposed) Second Amended Complaint

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PROOF OF SERVICE

I, James Madison Kelley, under penalty of perjury attest that I mailed

MOTION FOR LEAVE TO AMEND
THE SECOND AMENDED COMPLAINT

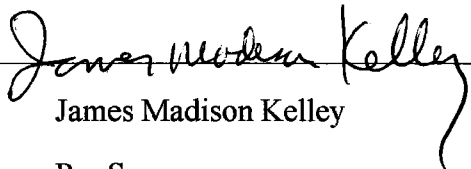
PROPOSED AMENDED COMPLAINT

By US Priority mail to the following people:

S. Christopher Yoo, esq.
John M. Sorich, esq.
Thomas Van, esq.

AlvaradoSmith, PC
1 MacArthur Place, #200
Santa Ana, CA 92707

Dated at Saratoga, California, this 27th day of March 2014

By: 
James Madison Kelley
Pro Se

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6 PRO SE

7 **UNITED STATES BANKRUPTCY COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA – DIVISION 5**

9 In Re:	
10 JAMES MADISON KELLEY,	Adv. Case No. 10-05245
11 Debtor	Bkr. Case No. 08-55305 ASW
12	Chapter 11
13	
14 JAMES MADISON KELLEY) PROPOSED
15 Plaintiff) THIRD AMENDED COMPLAINT
16 v.) Declaratory Relief
17 JPMORGAN CHASE BANK, NA,) 1. Statutory Contract Invalidity
18 DOES (1-19)) 2. First Loan TILA Rescission
19) 3. Second Loan TILA Rescission
20) 4. Objection to Proof of Claim 2
21) 5. Objection to Proof of Claim 3
22) 6. First Loan Payment and Discharge
23) of Debt
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1 **PRELIMINARY STATEMENT**

2 This, the Third amended adversary complaint ("TAC"), asks for declarations of
3 loan contract invalidity under Cal. Civ Code 1550, et seq., and declarations of rescission
4 with respect to a refinancing package consisting of the two loans on the Plaintiff's
5 principle residence at 14390 Douglass Lane Saratoga, CA 95070.

6 The loans are referred to herein as the First Loan and the Second Loan. The First
7 Loan was made on or about July 26, 2007. The Second Loan was made on or about
8 September 18, 2007.

9 The factual allegations of the Second Amended Complaint have been
10 supplemented by discovery evidence. The additional Claim

11 Plaintiff asks the Court to deny the Proofs of Claims 2 and 3. This is a core issue
12 because JP Morgan Chase Bank, NA ("Chase") is claiming to be the real party in interest
13 but they have not and cannot substantiate their standing. Plaintiff alleges that Chase
14 cannot have constitutional standing and that Chase is not a real party in interest. These
15 are core issues.¹

16 **JURISDICTION AND VENUE**

17 2. This adversary proceeding arises out of the Chapter 11 Case: In re James Madison
18 Kelley, Case No. 08-55305 ASW. This adversary proceeding is brought pursuant to
19 Bankruptcy Rule 7001.

20 3. This Court has subject matter jurisdiction under 28 U.S.C. 1334(b) and 28 U.S.C.
21 2201. This is a core proceeding under U.S.C. 157(b)(2)(I), F.R.B.P. 7008(a)

22 4. Venue is proper in this district pursuant to 28 U.S.C. 1408.

23 **PARTIES**

24
25
26 ¹ The claim for rescission of the Notice of Default and Substitution of Trustee in the proposed complaint
27 has been dropped because of the jurisdiction issue raised under the Rule 15 order. Plaintiff does not waive
the rights to this or any other causes of action under proper jurisdiction.

1 5. The Plaintiff, James M. Kelley, has a Ph.D. in Electrical and Computer Engineering
2 from the University of California. The Plaintiff has employed attorneys in business
3 litigation, and represented himself in a federal securities lawsuit. He has no training in the
4 law. The Plaintiff learned to read and plead the law in the federal securities case. Dr.
5 Kelley is representing himself in this matter for economic reasons after talking to more
6 than 15 attorneys.

7 6. Defendant JPMorgan Chase Bank, NA ("Chase") is the self-styled acquirer of certain
8 (unspecified) assets and liabilities from the Federal Deposit Insurance Corporation
9 ("FDIC") as Receiver ("Receiver").

10 7. Does (1-19) including possible assignees and or holders of the notes and deeds of
11 trust and possible securitization trustees

12 **THIRD PARTIES**

13 8. Washington Mutual Bank ("WMB") was a federal saving association in 2007 and
14 2008.

15 9. Washington Mutual Bank, FA ("WMBFA") ceased to exist as legal corporate entity
16 in April 2005.

17 10. North American Mortgage Company ("NAMCO") ceased to exist as legal corporate
18 entity in December 2007.

19 11. Stewart Title of California was the title insurance and escrow company for the First
20 Loan. The Stewart Title office is on Sunnyvale Saratoga Road in Saratoga.

21 12. The Federal Deposit Insurance Corporation as Receiver is the successor in interest to
22 WMB but not WMBFA or WMBFSB.

23 13. LSI Appraisal, LLC was the property appraiser.

24 **DEFINITIONS**

25 14. The "First Loan" is Washington Mutual Bank, FA loan number 3018113559.

26 15. The "Second Loan" is Washington Mutual Bank loan number 0747861714.

27 The Second Loan is a Home Equity Line of Credit ("HELOC")

1 **FACTUAL ALLEGATIONS**

2 16. On July 6, 2007, Loan Consultant Louis Helmonds met with the Plaintiff and he
3 prepared a loan application at his office on Saratoga Sunnyvale Road in Saratoga for the
4 refinance of the Plaintiff's existing loans on the residence at 15070 Douglass Lane,
5 Saratoga 95070.

6 17. At the July 6 meeting, the Plaintiff indicated that he no longer needed the property
7 and intended to sell the property after it was prepared for the market. The Plaintiff stated
8 that he preferred one loan to replace the two existing loans. The refinance was to be
9 stated income, low documentation and asset based 40-year loan because the Plaintiff was
10 self-employed.

11 18. Mr. Helmonds stated that the refinance should be split into two loans. Mr. Helmonds
12 stated that the Plaintiff could obtain a \$500,000 home equity line of credit immediately
13 after the payoff of the existing first and second loans. Mr. Helmonds maintained this
14 misrepresentation until August 14, 2007 when the Plaintiff received a Commitment Letter
15 from Helmonds that changed the terms of the \$500,000 HELOC to full documentation.

16 19. The false representation that the Plaintiff could obtain a \$500,000 HELOC on the
17 same refinance terms caused the subsequent failure of the loan because the \$500,000 was
18 required to adequately capitalize the refinance and without that amount the risk of the
19 failure was greatly increased.

20 20. The addition of a 2% prepayment penalty on July 24, 2007 further increased the risk
21 of loan failure. Plaintiff has been seriously harmed by the Helmonds misrepresentations
22 and concealments, which substantially caused this bankruptcy.² Mr. Helmonds serially
23 lied to the Plaintiff in order to close the refinance and to make undisclosed commissions.
24
25
26

27 ² Perlas v. GMAC Mortg., LLC, 187 Cal. App. 4th 429, 434 (2010)

1 21. On July 10, 2007, WMBFA (Helmonds) formally changed the First Loan from a 40-
2 year loan to a 30-year loan at 7.493 % interest according to the Commitment Letter
3 obtained in discovery in August 2011. The Plaintiff was not informed of terms.

4 22. On or about July 12, 2007, the Plaintiff received the deceptive Good Faith Estimate of
5 Settlement Charges and Settlement Service Provider Disclosure (GFE) print dated
6 7/9/2007 by mail. The GFE was deceptive because it did not specify the terms and
7 conditions known to Helmonds on July 6 and expressed in the undisclosed July 10
8 Commitment Letter. The GFE, inter alia, deceptively stated that:

- 9 a. the interest rate was 1.775%;
- 10 b. the COFFI index was 4.293%;
- 11 c. the term 480 months;
- 12 d. the loan origination fee was 1%;
- 13 e. the mortgage loan amount was \$2,939,000;

14 23. Had the Plaintiff known that he was qualified for the lower interest rate of 7.49% he
15 would not have closed the First Loan on July 26, 2007 at an interest rate of 8.08 %. The
16 higher interest rate increased the risk of failure in the refinance by increasing interest
17 payments \$17,654 per year and monthly payments by nearly \$1,500.

18 24. On July 16, 2007, LSI Appraisal, LLC completed the property appraisal report
19 showing an appraised value of \$4,400,000.

20 25. Four Commitment Letters were produced in discovery for July 10, 11, 20 and 26.
21 2007 but they were not given to the Plaintiff during loan origination.

22 26. On July 24, 2007, Mr. Helmonds told the Plaintiff in a telephone call made to
23 Plaintiff's residence that without a prepayment fee that the interest rate on the loan would
24 be increased. He did not disclose the increase and did not disclose the proposed interest
25 rate.

1 27. Plaintiff learned in April 2012 that the Commitment Letter for the July 26 loan did
2 not require a prepayment penalty and that there was no effect on the interest rate.³ The
3 2% prepayment penalty greatly increased the risk of default by imposing a penalty of
4 \$59,845.3 for selling the house in the first year.⁴ Mr. Helmonds lied again to the Plaintiff.

5 28. On July 25, 2007, the first escrow was held at Stewart Title of California at their
6 Saratoga Sunnyvale Road office. The Plaintiff was surprised that the loan presented was a
7 30-year loan instead of the 40-year loan and the interest rate was higher than the loan it
8 was to replace. The monthly payments were also significantly greater. The Plaintiff
9 expressed his concerns to Mr. Helmonds. Mr. Helmonds further misrepresented that the
10 Plaintiff could get a lower interest rate when his FICO score increased to 690 or more.
11 The Plaintiff aborted the July 25 escrow.

12 29. On July 26, 2007, the second escrow was held at Stewart Title of California in
13 Saratoga and the Plaintiff for a 40-year loan. Mr. Helmonds dropped off a disclosure that
14 states that North American Mortgage Company processed the Loan. The escrow was
15 completed with only the escrow agent and the Plaintiff present.

16 30. The Plaintiff was not given the Loan Approval or Commitment Letter for the July 26
17 escrow as required by the Escrow Agreement and Notification, and the Lenders closing
18 Instructions. 15 USC 1638(b), Reg. Z 226.17

19 31. On August 1, 2007, the escrow closed with the payoff by wire of the two existing
20 loans and their replacement by the new WMBFA loan. The Plaintiff was overcharged
21 interest on the paid off loans through August 3, 2007.

22 32. On or about August 14, 2007, Plaintiff received a Commitment Letter from Mr.
23 Helmonds for a \$500,000 home equity line of credit. The Commitment Letter discloses a
24 full documentation loan requiring tax returns, and other documentation. This was a shock

25 ³ None of the underwriting documents require a prepayment penalty.

26 ⁴ Furthermore, prepayment penalties facilitate kickbacks by lenders to brokers (yield-spread premiums) for
27 placing borrowers in loans at a higher interest than the borrower could otherwise qualify for. , Why
28 Prepayment Penalties are Abusive in Subprime Home Loans, Center for Responsible Lending, CRL Policy
Paper No. 4, April 2, 2003

1 to the Plaintiff. The Plaintiff immediately called Mr. Helmonds. Mr. Helmonds advised
2 Plaintiff not to accept the altered loan terms. Helmonds indicated that he could get a
3 \$250,000 home equity line of credit and then later increase it to \$500,000 when the FICO
4 score increased to 690 or above.

5 33. The Plaintiffs reliance on the \$500,000 Second Loan was the main reason the Plaintiff
6 signed the First Loan on July 26. The increased interest rate and the 2% prepayment
7 penalty greatly increased the risk of failure without the \$500,000 second.

8 34. Mr. Helmonds lied to the Plaintiff about the \$500,000 second loan, the prepayment
9 penalty and the reduction in the interest rate payment just as he had lied to the Plaintiff on
10 the GFE. Mr. Helmonds concealed the disclosures that would have revealed the lies.

11 35. Mr. Helmonds was a Senior Loan Consultant and the Plaintiff had no reason to doubt
12 Helmonds authority to speak for WMBFA. The Plaintiff had no knowledge that WMBFA
13 did not exist and was a "straw man" lender name and no reason to investigate.

14 36. On August 20, 2007 the First Loan Origination file was shipped to Sonia Martinez.
15 Martinez performed a due diligence audit of the First Loan qualify it for securitization.

16 37. The FHLB_SF states that on or about August 28, 2007, the First Loan was pledged by
17 WMB under a "blanket lien" to the Federal Home Loan Bank of San Francisco
18 ("FHLB_SF") for money advanced.

19 38. On September 12, Helmonds and Silva initiated a second loan for \$250,000. Plaintiff
20 made no application for this loan.

21 39. On or about September 18, 2007, documents for the home equity line of credit for
22 \$250,000 were signed at the Washington Mutual office on Sunnyvale-Saratoga Road in
23 Saratoga, California. Only Rosalie Silva and the Plaintiff were present.

24 40. On September 20, 2007, a new set of Second Loan documents was printed out
25 because Rosalie Silva did not follow the Signing Instructions.

26 41. In early October 2007, the \$250,000 Second Loan was sold to WMI as indicated by
27 the FISERV title insurance policy that lists WMI as the creditor.